

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

\_\_\_\_\_  
HENDERSON BUTLER,

Plaintiff,

v.

\_\_\_\_\_  
MAKATO NAGOSHI, M.D. and,  
JONATHAN GORDON, M.D.,

Defendants.  
\_\_\_\_\_

04 10761 RWZ

Civil Action No.

NOTICE OF SUBSTITUTION

Please take notice that pursuant to 28 U.S.C. §2679(d)(1), the United States is hereby substituted for the individual defendants, Makato Nagoshi and Jonathan Gordon with respect to any and all causes of action based on state law. The grounds for this substitution are:

1. The plaintiff filed a Complaint in Suffolk Superior Court, which was removed to this Court today, alleging that he sustained damages as result of the alleged negligence and breach of duty by Dr. Nagoshi and Dr. Gordon during a medical procedure at the VA Hospital in West Roxbury, Massachusetts. Drs. Nagoshi and Gordon were employees of the Department of Veterans Affairs ("VA") (and thus the United States) at all relevant times.
2. Pursuant to 28 U.S.C. §§2675 and 2679, plaintiff's exclusive remedy for a tort claim against an employee of the United States is an action against the United States under the Federal Tort Claims Act.
3. The United States Attorney for the District of Massachusetts has certified pursuant

to 28 U.S.C. §§2679(d)(1) and (2), and 28 C.F.R. §15.3, that at the time of the conduct alleged, Drs. Nagoshi and Gordon were acting within the scope of their employment as employees of the VA. See Certification filed herewith.

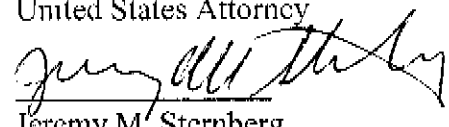
4. Upon Certification that a federal employee was acting within the scope of his office or employment at the time of the incident out of which a state law claim arises, any civil action based on the incident shall be deemed an action against the United States, and the United States "shall be substituted" as the sole defendant with respect to the state law claims. 28 U.S.C. §2679(d)(1) and (2).

A proposed form of Order amending the caption of this case to reflect the substitution of the United States is attached hereto for the convenience of the Court.

Respectfully submitted  
By its attorney,

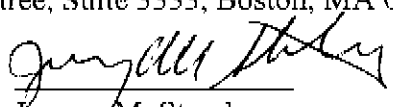
MICHAEL J. SULLIVAN  
United States Attorney

By:

  
Jeremy M. Sternberg  
Assistant U.S. Attorney  
1 Courthouse Way  
Suite 9200  
Boston, MA 02210  
(617) 748-3142

**CERTIFICATE OF SERVICE**

This is to certify that I have this 15<sup>th</sup> day of April, 2004, served upon the person listed below a copy of the foregoing Notice of Substitution by depositing in the United States mail a copy of same in an envelope bearing sufficient postage for delivery: Neil S. Cohen, Law Offices of Jeffrey S. Glassman, LLP, One Beacon Street, Suite 3333, Boston, MA 02108.

  
Jeremy M. Sternberg  
Assistant U.S. Attorney